

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of the application of Robert and Brenda Grant for a variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to disturb the Critical Area Buffer to construct a single-family dwelling and appurtenances.

Case No. VAAP #05-3122
Grant

ORDER

WHEREAS, Application VAAP #05-3122 – Grant was duly filed with the St. Mary's County Board of Appeals (the "Board") by Robert and Brenda Grant (the "Applicants"), on or about February 10, 2014; and

WHEREAS, the Applicants seek a variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance, as amended, (the "Ordinance"), to disturb the Critical Area Buffer to construct a single-family dwelling and appurtenances. The property contains 1.62 acres; is zoned Rural Preservation District (RPD), Limited Development Area (LDA) Overlay District; and is located at 25905 Whiskey Creek Road, Hollywood, Maryland; Tax Map 21, Grid 7, Parcel 144 (the "Property"); and

WHEREAS, after due notice, a public hearing was conducted by the Board on Thursday, April 10, 2014 in Main Meeting Room, Chesapeake Building, 41770 Baldrige Street, of the Governmental Center in Leonardtown, Maryland, at 6:30 p.m., and all persons desiring to be heard were heard, documentary evidence received, and the proceedings electronically recorded.

NOW, THEREFORE, having reviewed the testimony and evidence presented at the hearing, the following facts, findings, and decision of the Board are noted:

SUMMARY OF TESTIMONY

Yvonne Chaillet, Zoning Administrator, summarized the staff report. Wayne Hunt of Little Silences Rest, for the Applicant, testified that the Applicant meets all the requirements for granting the variance request based on the size, shape, slope and boundary restrictions on the property.

SUMMARY OF DOCUMENTARY EVIDENCE

The Board accepted into evidence the following exhibits:

- Exhibit No. 1 – Affidavit of Property Posting and Mailing Receipts
- Exhibit No. 2 – Staff Report

FINDINGS OF FACT

The subject property (the "Property") is essentially a fully wooded, vacant lot located on St. Thomas Creek in Hollywood. An existing pier is located off the northwest corner of the Property. The Property is a grandfathered lot in the Critical Area because it was recorded prior to the adoption of the Maryland Critical Area regulations in December 1985. The lot is only 50 feet wide at its frontage with Whiskey Creek Road and is essentially no wider than 85 feet as far back as 200 feet. The Property also has a panhandle shape.

The Applicants propose to construct a single-family dwelling, attached garage, porches, walkways, and a driveway. The footprint of the proposed single-family dwelling is less than 1,800 square feet. The odd shape of the Property, the presence of steep slopes, and the location of the improvements in an area of the Property that will result in the least disturbance to these slopes, all result in the need for a long driveway from Whiskey Creek Road to serve the house. Additionally, a modest parking area is needed to allow vehicles to turn around before exiting the Property.

The total proposed lot coverage is 8,753 square feet, or 12.1 percent. The allowed lot coverage for the Property is 15 percent or 10,847 square feet. The existing vegetative cover on the Property is 70,656 square feet or 97.7 percent of the Property. The Applicants plan to remove 20,073 square feet or approximately 28 percent of the vegetation for construction of the house, driveway, initial septic easement area, deep- drilled well, and approved stormwater management devices.

The Property is entirely constrained by the Critical Area Buffer (Buffer) which has been expanded for steep slopes and highly erodible soils. The existing soil types on the Property are Evesboro-Westphalia complex (EwE2). These soil types are located on slopes that are between twelve and twenty percent. This soil type is considered a highly erodible soil as described within the 1978 United States Department of Agriculture Soil Conservation Service Soil Survey of St. Mary's County. The Property is not within a known Forest Interior Dwelling Species (FIDS) habitat protection area. The Property is surrounded by development. The shoreline of the Property is located within the AE flood zone with a base flood elevation of five feet. The proposed development is located outside of the floodplain.

Stormwater Management for the proposed development was approved on November 18, 2013, and the Soil Conservation District approved the engineered erosion and sediment control plan on February 5, 2014. The Health Department has approved the location of the proposed septic tank and septic easement areas and the proposed deep-drilled well. The Critical Area Commission does not oppose the variance request.

CONCLUSIONS OF LAW

The Board addresses the Special Standards for Granting Variances, which are set forth in Section 24.4 of the Ordinance, finding as follows:

- a. ***That special conditions or circumstances exist that are peculiar to the land or structure involved and that strict enforcement of the Critical Area provisions of this Ordinance would result in unwarranted hardship;***

The lot is only 50 feet wide at its frontage with Whiskey Creek Road and is essentially no wider than 85 feet as far back as 200 feet. The Property also has a panhandle shape. The Property is entirely constrained by the Critical Area Buffer (Buffer) which has been expanded for steep slopes and highly erodible soils.

For these reasons, the Board finds that special conditions or circumstances exist that are peculiar to the land or structure involved and that strict enforcement of the Critical Area provisions of this Ordinance would result in unwarranted hardship.

- b. ***That strict interpretation of the Critical Area provisions of this Ordinance will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of St. Mary's County;***

A strict interpretation of the Critical Area provisions of the Ordinance, which prohibit development in the Critical Area Buffer without a variance, would deny the Applicants the ability to reasonably develop the Property.

For these reasons, the Board finds that strict interpretation of the Critical Area provisions of this Ordinance will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of St. Mary's County.

- c. ***The granting of a variance will not confer upon an applicant any special privilege that would be denied by the Critical Area provisions of this Ordinance to other lands or structures within the Critical Area of St. Mary's County;***

Owners of grandfathered properties in the Critical Area are entitled to seek relief from the provisions of the Ordinance through the variance process.

For these reasons, the Board finds that the granting of a variance will not confer upon an applicant any special privilege that would be denied by the Critical Area provisions of this Ordinance to other lands or structures within the Critical Area of St. Mary's County.

- d. The variance request is not based upon conditions or circumstances that are the result of actions by the applicant;*

The lot is only 50 feet wide at its frontage with Whiskey Creek Road and is essentially no wider than 85 feet as far back as 200 feet. The Property also has a panhandle shape. The Property is entirely constrained by the Critical Area Buffer (Buffer) which has been expanded for steep slopes and highly erodible soils.

For these reasons, the Board finds that the variance request is not based upon conditions or circumstances that are the result of actions by the applicant.

- e. The granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of a variance will be in harmony with the general spirit and intent of the Critical Area program;*

The Critical Area program recognizes grandfathered properties and the rights of property owners to develop or redevelop them. The Maryland Critical Area Commission has determined that potential adverse impacts resulting from development on these properties can be mitigated by planting trees and shrubs. Mitigation is required at a ratio of three to one per square foot of the variance granted. Mitigation is also required for the removal of any trees with a diameter greater than two inches. The required vegetation will improve plant diversity and habitat value for the site and will improve the runoff characteristics for the Property, which will contribute to improved infiltration and reduction of non-point source pollution leaving the site in the future.

For these reasons, the Board finds that the granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of a variance will be in harmony with the general spirit and intent of the Critical Area program.

- f. The variance is the minimum necessary to achieve a reasonable use of the land or structures;*

The lot is only 50 feet wide at its frontage with Whiskey Creek Road and is essentially no wider than 85 feet as far back as 200 feet. The Property is entirely constrained by the Critical Area Buffer (Buffer) which has been expanded for steep slopes and highly erodible soils. The footprint of the proposed single-family dwelling is less than 1,800 square feet. The odd shape of the Property, the presence of steep slopes, and the location of the improvements in an area of the Property that will result in the least disturbance to these slopes, all result in the need for a long driveway from Whiskey Creek Road to serve the house. Additionally, a modest parking area is needed to allow vehicles to turn around before exiting the Property.

For these reasons, the Board finds that the variance is the minimum necessary to achieve a reasonable use of the land or structures.

DECISION

NOW, THEREFORE, BE IT ORDERED, that, having made a finding that the standards for a variance and the objectives of Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met, and further finding, for all reasons stated herein, that the Applicants have rebutted the presumption that the specific development activity proposed by the Applicants does not conform with the general purpose and intent of Subtitle 18 of Title 8 of the Natural Resources Article of the *Annotated Code of Maryland* and regulations adopted pursuant thereto and the requirements of St. Mary's County Comprehensive Zoning Ordinance enacted pursuant thereto, a variance to disturb the Critical Area Buffer to construct a single-family dwelling and appurtenances is approved.

This Date: May 8, 2014

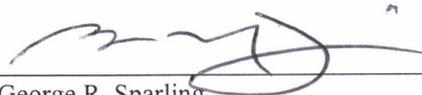

George A. Hayden
Chairman

Those voting in favor of the request:

Mr. Hayden, Mr. Guy, Mr. Green, Mr. Payne and Mr. Moreland

Those voting against the requested variance:

Approved as to form and legal sufficiency:


George R. Sparling
Attorney